



RESOURCE PLANNING ADVISORY COMMITTEE

October 29, 2009

MEETING MINUTES

Thursday, October 29, 2009, 8:00 AM at the City of Tucson Community Services Center,
310 N. Commerce Park Loop, Tucson, Arizona.

RPAC Members in Attendance

- Tim Johnson, At-Large Member
- Greg Shinn, Southern Arizona Home Builders Association
- Diana Hadley, Santa Cruz River Alliance
- Amanda Best, Metropolitan Pima Alliance
- Karolyn Kendrick, Arizona Native Plant Society
- Chad Kolodisner, At-large Member
- Joy Lyndes, At-large Member
- Matt Clark, Defenders of Wildlife
- Mike Baruch, At-large Member

Ex-officio Members in Attendance

- Orlanthia Henderson, Town of Sahuarita
- David Jacobs, Arizona State Land Dept.
- Claire Zucker, Pima Association of Governments
- Carla Danforth, Pima Co. Regional Flood Control District

Staff in Attendance

- Leslie Liberty, Office of Conservation and Sustainable Development (OCSD)
- Nicole Urban-Lopez, OCSD
- Holly Lachowicz, Ward 3
- Viola Romero-Wright, City Attorney's Office

AGENDA ITEMS

1. Call to Order/ Roll Call

A quorum was established and the meeting commenced at 8:05 a.m.

2. Approval of Minutes for October 8, 2009

- Amanda Best moved to approve the meeting minutes from October 8, 2009. Motion was seconded by Chad Kolodisner. Motion was approved unanimously by a voice vote of 9-0.

3. Updates

- Nicole Urban-Lopez distributed a proposed 2010 RPAC meeting schedule. The RPAC decided to continue to meet on the second Thursday of each month from 8-10 a.m.
- Nicole distributed a copy of the RPAC membership roster for committee members to update with any new contact information.

4. Discussion of proposed changes in riparian ordinance and development standard, discussion of results of subcommittee meeting, and possible motions on scheduling additional subcommittee meeting and additional RPAC meetings

- Staff distributed a matrix of the proposed regulatory areas.
 - The committee has been discussing a number of different types of floodplains: floodplains constrained to top of bank, unconstrained floodplains, impoundments and shallow groundwater areas.
 - Staff removed shallow groundwater areas from the list of proposed regulated areas because most of them are already protected by other existing regulations.
 - Staff distributed copies of maps showing the shallow groundwater areas and the boundaries of existing regulations that affect them.
 - It was commented that it is unlikely that any new shallow groundwater areas would be added to the maps.
 - Staff clarified that the City's regulatory authority is within the 100-year floodplain. If the new ordinance is going to regulate beyond the 100-year floodplain, the City Attorney's Office will have to review for legal authority to do that.
 - Staff clarified that the City's new policy is that any lands annexed into the City must comply with the CLS.
 - It was commented that the 100-year floodplain is the regulatory boundary, not the shallow groundwater areas. If additional protections for shallow groundwater areas aren't going to be included in the new ordinance, then the boundaries don't matter because the boundary is the 100-year floodplain.
 - If water is within 50 feet of the surface, then mesquite bosque can be naturally supported.
 - It was commented that shallow groundwater areas are important biologically, and they can be included in the new ordinance, but they are already protected by the 100-year floodplain within City limits and those outside the city limits would have to comply with the CLS if they were annexed. Does it make sense to include them in the riparian ordinance if they are already protected by other regulations?
 - The shallow groundwater areas that are not part of the 100-year floodplain are within the boundaries of other protected areas such as Sabino Park and Cienega Creek Preserve, or they are protected by the CLS.
 - Staff will bring a map showing the shallow groundwater areas and how they coincide with the 100-year floodplain, the CLS, Important Riparian Areas and other categories of the CLS, and existing preserves.
 - It was clarified that the lands that will be affected are those that are currently undeveloped, which are mostly owned by the City.
 - It was commented that if the City decides to do an urban renewal project, areas such as the Kroger Lane neighborhood may be redeveloped and the shallow groundwater areas in that neighborhood could be lost if it isn't protected by the ordinance.
 - It was commented that existing developed properties that are not riparian should not be regulated for their potential to have riparian areas.
 - It was commented that the committee has been discussing regulating properties that do not currently have riparian areas due to human activity, and that would otherwise support riparian habitat if they were not degraded.
 - It was commented that that discussion has been about undeveloped properties, not properties that have already been developed such as Kroger Lane.
 - It was commented that there are areas in town that are important for development from a tax-generating perspective that should not be over-regulated because the revenues generated can help pay for restoration in other areas where there is more connectivity.
 - Staff asked the committee what restrictions they think are appropriate for shallow groundwater areas that are not in 100-year floodplain?

- It was suggested that there should be incentives instead of restrictions for shallow groundwater areas that are not within the 100-year floodplain.
- It was commented that shallow groundwater areas within the City are important and developers should be made aware when they are developing over these areas. Incentives for protection and restoration should be available.
- It was commented that it is difficult to legislate win-win solutions in cases where flexibility is necessary to achieve win-win situations. A certain amount of discretion should be built into the policy.
- A comment was made that historically, nature has always lost and now we should look at what can be preserved as well as the potential for restoration.
- It was commented that there should be a balance between flexibility and certainty. Flexibility helps achieve site-specific win-win solutions. Achieving the greatest amount of certainty will require complex regulations that take a lot of time, money and effort to implement. The committee should consider which elements of the new ordinance must be included and which elements can be flexible.
- It was suggested that flexibility be built-in using the best management practices (BMPs)
- OCS and DSD should be given the flexibility to work on a site-specific solution but if that fails, then they can fall back on the BMPs
- Staff summarized that the committee would like the City to acknowledge when developers are building over a shallow groundwater area. The regulatory area will still be the 100-year floodplain, but ways to incentivise protecting existing vegetation and restoring vegetation will be considered.
- A question was asked about when the 50 ft. area beyond top of bank comes into play if the regulatory review area is the 100-year floodplain?
- It is difficult to define top of bank in some areas where the watercourses really don't have banks.
- It was suggested that the constrained washes have to have some element of human impact. If it is a natural watercourse that has not been channelized, then it is unconstrained and the 100-year floodplain is used.
- The purpose of including this element is to avoid the need for listing and rezoning all watercourses for protection which is currently required under the WASH ordinance.
- It was clarified that the top of bank plus 50 ft. is the regulatory trigger area, not the area that must be protected. The Protected Riparian Area (PRA) is what would have to be protected.
- It was commented that the committee still has not agreed on a definition of PRA. This is an important step that will inform other decisions related to the new ordinance.
- The committee is currently talking about PRA as vegetated areas supported by water exceeding rainfall alone that is distinguished by its relative size, density and species composition.
- Staff commented that constrained versus unconstrained floodplain needs to be defined, which is linked to some physical alteration of the watercourse itself.
- When development occurs in an undeveloped area, it can increase the velocity of the water and cause the watercourse to incise downstream, so the upstream development is causing the downstream incising in a natural area. How do you determine if that is human caused or natural?
- A suggestion was made to develop a clear definition of PRA that can provide some level of certainty for developers, but if there is a question about the boundaries of the PRA on a particular site, an additional survey can be completed to groundtruth the boundaries.
- The County's volumetric survey was suggested for possible use.

- Staff commented that the City is using EECBG money to review and modify the land use code to remove barriers to sustainable development. This will include recommendations for incentives that can be implemented under the new riparian ordinance.
- The committee needs to develop a clear description of “sandy bottom”, but if the developer does a jurisdictional delineation then that would be accepted.
- Staff will do a hydrologic analysis on spreaders in the Southlands to verify if they reach 100 cfs because there are areas with small washes that feed into spreaders that have acres of riparian habitat. This will help ensure the regulatory trigger threshold makes sense.
- A comment was made that ponding and riparian habitat resulting from infrastructure, such as railroads, should not be regulated as PRA.
- A comment was made that habitat characterized as riparian does not have to be along a wash and should still be protected.
- The Federal definition of wetland does not differentiate between natural or human-caused.
- The Army Corps of Engineers regulates habitat if it is in an area where there is water, whether or not it is along a wash.
- Staff clarified that vegetation will still be protected under the NPPO despite what threshold the committee chooses for the riparian ordinance.
- It was suggested that the threshold be linked to the habitat quality.
- Staff distributed the draft Habitat Quality Rating Sheet
 - Staff commented that the rating points assigned may need to be revised.
 - A suggestion was made to weight the rating criteria because some elements are more important than others.
 - It was commented that the size of a wash doesn’t necessarily reflect the quality of the wash, but under the current rating sheet a 100-250 cfs wash automatically results in a low quality wash.
 - It was commented that the committee needs to recognize if there is riparian vegetation that is greater in diversity and density than the surrounding upland. If not, then there really isn’t a distinguished riparian area. This goes back to the need to define PRA.
 - Additional input on the wildlife corridor potential point spread is welcome from the committee.
 - Staff clarified that the rating sheet is written to reflect the existing land use, not zoned land use. Zoning is not reflected in the rating sheet.
 - It was commented that the zoning is an important factor to include because by looking at current land use only, every wash is going to be rated “high” because it is currently open space, even though it may be zoned commercial or industrial.
 - It was commented that the City currently regulates landscape buffers, screening, etc. based off existing zoning, not existing land use.
 - A suggestion was made to add another criterion called, “surrounding zoning as it affects wildlife potential”.
 - A suggestion was made to only consider zoning that was enacted within a certain number of years because some zoning was established 20+ years ago and is no longer consistent with planning goals.
- Staff distributed copies of the draft Regulatory Steps Required by Level of Watercourse Encroachment
 - The matrix outlines the regulatory steps required given particular level of encroachment. The committee needs to decide if/when the following elements will be required: delineating the habitat, completing a WERR, developing a mitigation plan, requesting a DSMR, and going to SAC.

- It was clarified that “habitat” does not necessarily mean PRA.
- The WERR and the mitigation plan are linked to encroachment into the PRA. The habitat delineation would occur first to determine where the PRA is.
- The current proposal for mitigation is 1:1 plant replacement plus the Best Management Practices (BMPs)
- Concerns were raised over the replacement quality of the vegetation. If a mature mesquite is replaced by a one gallon mesquite, the habitat quality is lost.
- A suggestion was made to base replacement on caliper inch of the vegetation being replaced.
- A comment was made that smaller trees may have a higher survivability rate.
- Staff distributed copies of the draft BMPs
 - Staff suggested the BMPs be weighted so that those that require structural changes are weighted more heavily than those with only vegetation elements.
 - A comment was made that the older version of the BMPs was simpler.
 - Staff had concerns that the older version did not adequately address invasive species or increasing species diversity.
 - Concerns were raised that developers that have chosen properties wisely will be penalized for choosing properties without invasive species.
 - Staff commented that flexibility decreases when the quality of the wash increases.
 - Staff asked the committee to email comments about the BMPs to Leslie and Nicole within a week.

5. Discussion of timeline for completing ordinance revision, public engagement, and obtaining additional stakeholder input

- Staff reported that an update of the new riparian preservation ordinance is on the Mayor and Council study session agenda for December 15, 2009.

6. Future Agenda Items

- Shallow groundwater areas
- Define Protected Riparian Area (PRA)
- Define constrained vs. unconstrained floodplain
- Determine impoundment area threshold
- Determine Habitat Quality chart relative to impoundments
- Determine how to address surrounding areas

7. Call to the Audience

8. Adjournment